

ORIGINAL

BEFORE THE STATE BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF IDAHO

In the Matter of the License of:

Eileen M. Wright,  
License No. PSY-299,

Respondent.

Case No. PSY-P4B-01-002

**FINAL ORDER**

THIS MATTER came before Jean R. Uranga, the designated Hearing Officer. The State appeared by its attorney of record, Kenneth Stringfield, Idaho Deputy Attorney General. Respondent, Eileen M. Wright, was represented by her attorney of record, Edwin Litteneker in this proceeding. Thereafter, the Hearing Officer conducted a hearing on the matter on August 2, 3 and 4, 2004. On October 22, 2004, the Hearing Officer submitted her Findings of Fact, Conclusions of Law and Recommended Order. Dr. Roberts and Dr. Kracke recused themselves from participating in this proceeding. On March 16, 2005, the Board conducted a hearing to receive oral argument from the parties.

This matter then came before the Idaho State Board of Psychologist Examiners at a special meeting held on March 28, 2005. The Board adopted the following Order.

IT IS HEREBY ORDERED as follows:

1. The Board adopts the Hearing Officer's Findings of Fact and Conclusions of Law, and incorporates the same herein by this reference.

2. That Respondent's actions constitute a violation of Idaho Code Sections 54-2909(d) and (e), and specifically Sections 4.07(a) and (b) of the 1992 Ethical Principles of Psychologists and Code of Conduct published by the American Psychology Association. These

**FINAL ORDER - 1.**

violations constitute grounds for disciplinary action against her license to practice psychology in the state of Idaho pursuant to Idaho Code Sections 54-2305 and 54-2309, and IDAPA 24.12.01.375. The Board therefore imposes the following disciplinary sanctions upon Respondent Eileen M. Wright:

a. That Respondent's license shall be suspended for a period of five (5) years, with two (2) years stayed conditioned upon her compliance with this order.

b. That Respondent shall pay the costs and attorneys fees incurred in the investigation and prosecution of this matter within ninety (90) days from the date of this Order in the total amount of Seventeen Thousand Five Hundred Fifty Eight Dollars and 61/100 (\$17,558.61), which costs and fees are reviewed in Exhibit "A" attached hereto and incorporated herein by this reference.

c. That Respondent shall pay a fine to the Board in the amount of One Thousand Dollars (\$1,000.00) within ninety (90) days from the date of this Order.

d. That upon completion of the three (3) year period of suspension, Respondent's license may be reinstated if the following conditions are met:

- (1) Respondent shall complete post-graduate education approved by the Board in the amount of twenty four (24) semester hours.
- (2) Respondent must attend and complete an impaired provider course approved by the Board.
- (3) Respondent must have complied with all federal, state and local laws and rules.
- (4) Respondent shall have paid the Board the fine as ordered.
- (5) Respondent shall have paid the costs and attorney's fees ordered.

e. Upon Respondent's reinstatement as provided, she shall be placed upon probation for two (2) years. During her probation, Respondent shall only practice under the supervision of a licensed psychologist approved by the Board. During her probation, Respondent must comply with all laws and rules governing the practice of psychology. Upon successful completion of her probation and her full compliance with this order, Respondent may be granted an unrestricted license. If Respondent fails to comply with the terms of her probation and this Order, the two (2) year stayed license suspension shall be immediately imposed by the Board after notice and an opportunity to be heard.

3. This is the Final Order of the Board.

a. Any party may file a Petition for Reconsideration of this Final Order within fourteen (14) days of the service date of this Final Order. The Board will dispose of the Petition for Reconsideration within twenty-one (21) days of its receipt, or the Petition will be considered denied by the operation of law. (*See*, Idaho Code Section 67-5247(4).)

b. Pursuant to Idaho Code Sections 67-5270 and 57-5272, any party aggrieved by this Final Order, or orders previously issued in this case, may appeal this Final Order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (i) a hearing was held; (ii) the final agency action was taken; or (iii) the party seeking review of this Final Order resides.

c. An appeal must be taken within twenty-eight (28) days: (i) of the service date of this Final Order; (ii) of any order denying petition for reconsideration; or (iii) of the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later.

(See, Idaho Code Section 67-5273.) The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

4. The Bureau Chief of the Bureau of Occupational Licenses shall cause a true and correct copy of this Final Order to be served upon the Respondent and the State's attorney by mailing a copy to them at their addresses as provided.

DATED this 22 day of April, 2005.

STATE BOARD OF PSYCHOLOGIST  
EXAMINERS

By Anne Marie Nelson  
Anne Marie Nelson, Chair

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22 day of April, 2005, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Kenneth Stringfield  
Deputy Attorney General  
Office of the Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

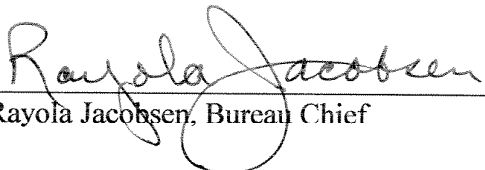
— U.S. Mail  
— Hand Delivered  
— Federal Express  
— Fax Transmission  
☒ StateHouse Mail

Edwin L. Litteneker  
Attorney at Law  
322 Main Street  
P.O. Box 321  
Lewiston, ID 83501  
Attorney for Respondent

☒ U.S. Mail  
— Hand Delivered  
— Federal Express  
— Fax Transmission  
— (208) 798-8387

Jean R. Uranga  
URANGA & URANGA  
P.O. Box 1678  
Boise, Idaho 83701-1678

☒ U.S. Mail  
— Hand Delivered  
— Federal Express  
— Fax Transmission

  
\_\_\_\_\_  
Rayola Jacobsen, Bureau Chief

Exh. A – Costs and Fees

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# IDAHO BUREAU OF OCCUPATIONAL LICENSES

## Formal Action Cost Summary

Case #	Respondent Name	Lic No
PSY-2003-2	EILEEN M WRIGHT	PSY-299

### Formal Action

Case #	Date	Vendor	Description	Amount
PSY-2003-2	7/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$1,155.20
PSY-2003-2	10/29/2003	HEDRICK COURT REPORTING	WRIGHT PSY 2003 2	\$185.65
PSY-2003-2	11/1/2003	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$851.20
PSY-2003-2	12/1/2003	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$102.60
PSY-2003-2	12/2/2003	HEDRICK COURT REPORTING	PSY2003 2	\$152.80
PSY-2003-2	1/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$121.60
PSY-2003-2	3/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$395.20
PSY-2003-2	4/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$60.80
PSY-2003-2	5/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$269.80
PSY-2003-2	5/24/2004	ATTORNEY GEN-USAGE ADJUSTMEN		\$565.42
PSY-2003-2	6/8/2004	ATTORNEY GEN-USAGE ADJUSTMEN	COPY OF EWRIGHT PSY CASE	\$147.30
PSY-2003-2	10/20/2003	DAVID G SANFORD, PH D	TESTIFY PSY 2003-2	\$592.50
PSY-2003-2	6/30/2004	URANGA & URANGA	EWRIGHT PSY BD	\$1,870.00
PSY-2003-2	8/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$999.40
PSY-2003-2	8/26/2004	ATTORNEY GEN-USAGE ADJUSTMEN	COURT REPORTING PSY 2003-2	\$492.20
PSY-2003-2	8/30/2004	HEDRICK COURT REPORTING	PSY 2003-2	\$2,029.00
PSY-2003-2	9/9/2004	ATTORNEY GENERAL OFFICE OF	PSY WRIGHT	\$79.44
PSY-2003-2	10/12/2004	ATTORNEY GENERAL OFFICE OF	PSY 2003-2	\$107.00
PSY-2003-2	11/12/2004	URANGA & URANGA	PSY 2003-2	\$4,730.00
PSY-2003-2	12/1/2004	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$323.00
PSY-2003-2	1/13/2005	KINKOS INC	PPSY 2003-2	\$985.30
PSY-2003-2	2/1/2005	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$106.40
PSY-2003-2	4/1/2005	ATTORNEY GENERAL OFFICE OF	PROFESSIONAL SERVICES	\$144.40
PSY-2003-2	4/15/2005	M & M COURT REPORTING SERVICE IN	PSY 2003-2	\$241.50
PSY-2003-2	6/30/2004	URANGA & URANGA	EWRIGHT PSY BD	\$0.90

**Formal Action Total** **\$16,708.61**

### Investigation

Case #	Date	Vendor	Description	Amount
PSY-2001-2	12/11/2003	MICHELLE BISSEY	DAG REQUESTED ADDTN FOLLOWUP	\$850.00

**Investigation Total** **\$850.00**

**Total Cost** **\$17,558.61**



Exhibit "A"

ORIGINAL

Jean R. Uranga  
Hearing Officer  
714 North 5th Street  
P.O. Box 1678  
Boise, Idaho 83701  
Telephone: (208) 342-8931  
Facsimile: (208) 384-5686  
Idaho State Bar No. 1763

BEFORE THE BOARD OF PSYCHOLOGIST EXAMINERS

STATE OF IDAHO

In the Matter of the License	)	
of:	)	Complaint No. PSY-P4B-01-002
	)	
	)	<b>FINDINGS OF FACT,</b>
Eileen M. Wright, Ph.D.	)	<b>CONCLUSIONS OF LAW</b>
License No. PSY-299,	)	<b>AND RECOMMENDED ORDER</b>
	)	
Respondent.	)	
	)	

This matter came on for hearing on August 2, 3 and 4, 2004. The Board of Psychologist Examiners was represented by and through their attorney of record, Kenneth Stringfield. Dr. Eileen Wright appeared in person and by and through her attorney of record, Edwin Litteneker. The hearing was conducted on the Amended Complaint filed November 20, 2003, by the Board of Psychologist Examiners. Following the presentation of evidence, both parties submitted written closing arguments and rebuttal arguments. The final rebuttal brief was received September 13, 2004.

## FINDINGS OF FACT

1. Dr. Eileen Wright is a licensed psychologist in the State of Idaho, holding License No. PSY-299. She was first licensed in Idaho February 1, 1995. Her educational background includes a Bachelor's Degree in child psychology; a Masters Degree in early childhood development; and a Ph.D. from U.S. International University in June, 1988. Dr. Wright was on the faculty of Lewis-Clark State College from July 1989 to 1995 or 1996. At some point, she took a leave of absence to be a visiting scholar at the University of Washington. Since 1998, she has practiced full-time as a psychologist in private practice.

2. Dr. Wright practices in Lewiston, Idaho. Dr. Wright's practice generally consists of both forensic psychology through court appointments for divorces and criminal cases and private psychotherapy. She concurred with Dr. Mark Roberts that "forensic psychology" is psychological work involving the court system.

3. By Order filed December 10, 1999, Magistrate Judge Terry McDaniel issued an Order for Parenting Evaluation appointing Dr. Wright as a parenting evaluator in the case of Rake v. Rake, CV98-25C and CV98-143C. Joe Rake and Kathy Neumayer Rake had two children: Charlie or "C.J.," born May 6, 1989, and John, born September 17, 1991. The Court Order noted Dr. Wright was appointed as the Court's expert pursuant to Rule 706, Idaho Rules of Evidence. The Order included check boxes to establish the duties of the parenting evaluator. In this case, Judge McDaniel checked



the box requiring Dr. Wright to provide a comprehensive parenting evaluation and opinions concerning specific factors. There was no provision in the Order that Dr. Wright facilitate visitations between the parties and the children. The Order further required Dr. Wright to prepare a written evaluation to be completed and delivered to the Court, the parties and counsel by March 31, 2000.

4. As part of the parenting evaluation, Dr. Wright met with both parents and the children on multiple occasions. Dr. Wright's evaluation, included visits at her office and home visits with each of the parents and the children.

5. By letter dated April 4, 2000, Dr. Wright transmitted her Parenting Evaluation Report to Judge McDaniel. In that transmittal letter, Dr. Wright states:

At this time, I wish to acknowledge the assistance provided by both attorneys. Ms. Taylor and Mr. Pica have been exemplary in their helpful and cooperative assistance. Whereas, Mr. Pica's client, Mr. Rake, has also been cooperative, Ms. Taylor's client, Ms. Neumayer-Rake has not. Due to Ms. Neumayer-Rake's unwillingness to comply with requests made by this evaluator, I believe I am unable to be of further assistance in this matter. I am ready and willing to answer questions that may arise from the enclosed report, however, I am unable to provide any additional effective assistance. Therefore, I respectfully resign from further involvement with this case.

6. Dr. Wright's Parenting Evaluation, which is undated, consisted of fifty pages. It appears the original report included three appendices of professional articles. Those articles were not attached to the report which was admitted as Exhibit T.

7. At the time of the evaluation, C.J. Rake was 10-years-old and John Rake was 8-years-old. The Rake report notes the children moved to Lewiston from McCall in October, 1997. Dr. Wright observed two supervised visits between C.J. and John and their father at her office. (Exhibit T, pp. 15-16.) Dr. Wright also conducted supervised home visits to observe the children with each of their parents in the parents' homes.

8. Page 25 indicates that, at the time of the evaluation, Mr. Rake was maintaining a temporary residence in Asotin, Washington, to facilitate proximity to a job site on the Grand Ronde River which would last for approximately six months.

9. Dr. Wright's Parenting Evaluation on page 26 includes quoted language from the Decree of Divorce. In the Decree of Divorce, the Court found Mr. Rake was a habitual perpetrator of domestic violence and awarded sole custody of the children to Ms. Neumayer Rake. The Decree was entered February 5, 1999. Mr. Rake was provided with four (4) weeks of summer vacation and alternate weekend visitation. Between September, 1999, and the first supervised visit in Dr. Wright's office on January 26, 2000, the boys had not seen their father.

10. Dr. Wright's custody recommendations are found on pages 40 through 45 of her Parenting Evaluation. She recommended that the parents have joint legal and joint physical custody of the children, instead of sole custody in Ms. Neumayer Rake. Dr. Wright recommended that Mr. Rake receive an additional overnight on

alternate weekends and an additional two weeks each summer. Dr. Wright found Ms. Neumayer Rake was alienating the children from their father and Dr. Wright further recommended that, if Ms. Neumayer Rake continued to alienate the children, the Court should consider changing custody of the two children to Mr. Rake. (Exhibit T, p. 45.)

11. As part of the divorce case, an Order was obtained ordering Dr. Wright to produce all of her records, notes and files to counsel for both parties. That Order was dated May 10, 2000.

12. A Memorandum Decision in the custody case was filed June 23, 2000. In his Decision, Judge McDaniel noted this was a high conflict divorce proceeding. He found Kathy Neumayer Rake was in contempt of court for terminating visitation without justifiable excuse. The Court adopted Dr. Wright's custody recommendations.

13. During September, 2000, Dr. Wright and Mr. Rake began a "personal relationship," after they met again while riding horses at Lucky Acres in Lewiston.

14. During the Fall 2000, Mr. Rake began exercising his weekend visits by staying with the boys at Dr. Wright's home in Lewiston, Idaho. In a letter dated November 8, 2000, C.J. Rake objected to having to stay with "our x councilor [sic], Eileen Wright." C.J. wrote:

I am not about to go back to that and I'm not going in two weekends, a month, and a year. I hope to never see dad again. Whoever is reading this, please help me fight this battle against my dad and not be like Eileen Wright who is just an idiot that took my mom, my

brother, and me down in order to please dad  
for whatever weird and sick reason she has.

15. On January 7, 2001, Kathy Neumayer Rake filed a complaint against Dr. Wright with the Bureau of Occupational Licenses. Her complaint was admitted as Exhibit 9. Ms. Neumayer Rake raised a variety of complaints regarding Dr. Wright. The only complaints relevant to the Amended Complaint and this proceeding are those allegations of an improper personal relationship between Mr. Rake and Dr. Wright involving sexual intimacies. With respect to those issues, Ms. Neumayer Rake complained Dr. Wright conducted herself in such a manner that she was unable to be objective and referenced the American Psychological Association Ethical Principles of Psychologists and Code of Conduct.

16. On page 10, Ms. Neumayer Rake complained her largest grievance was the fact that Dr. Wright began dating Joe Rake and they were being seen together in public less than six months after the evaluation was completed. She related she had heard rumors that Dr. Wright and Joe Rake were dating throughout the summer months, but had no proof until the boys began staying with Mr. Rake at Dr. Wright's house when he was in Lewiston. The boys stayed at Dr. Wright's home with Mr. Rake in October and November, 2000. John reported seeing them kissing. Ms. Neumayer Rake also related Mr. Rake had taken plane trips to Elko, Nevada, with Dr. Wright. She stated the boys heard Dr. Wright and Mr. Rake talking on the phone over the summer immediately following the evaluation. Ms. Neumayer Rake alleged Dr. Wright and Mr. Rake were looking for

ranch land together and the boys spent Thanksgiving and Christmas 2000 with Dr. Wright and Mr. Rake in Mr. Rake's home in McCall.

17. On page 15 of her complaint and in her testimony, Ms. Neumayer Rake stated she really felt betrayed by Dr. Wright and lacks trust in other therapists. On page 22, Ms. Neumayer Rake again alleged Dr. Wright and Mr. Rake were sexually intimate. On page 27, Ms. Neumayer Rake states that between July 1 and 4, 2000, Dr. Wright sent C.J. eight e-mails.

18. Dr. Wright provided a detailed, written response to the written complaint of Ms. Neumayer Rake. It is a 29-page document dated October 15, 2001, which was admitted as Exhibit 13. On page 1 of her response, Dr. Wright admitted she was bound by and utilized the "Guidelines for Child Custody Evaluations in Divorce Proceedings" provided by the American Psychological Association. Dr. Wright's report refers to exhibits. The exhibits were not attached to the Response to Complaint admitted as Exhibit 13. However, the Guidelines for Child Custody Evaluations in Divorce Proceedings was admitted as a separate Exhibit 5 and will be discussed in more detail later in these recommendations.

19. Dr. Wright asserted she was objective in her findings, did not violate any ethical standards during or after the evaluation, and was consistent in her findings. She stated: "Any relationship with Joe Rake was subsequent to my leaving the case and did not affect my impartiality." (Exhibit 13, p. 1.) Dr. Wright's Response to Complaint includes detailed dates on her

contacts with the various parties.

20. Dr. Wright first met with Ms. Neumayer Rake on December 8, 1999; with Mr. Rake on December 17, 1999; and with the two boys on December 28, 1999. Dr. Wright had a second appointment with Ms. Neumayer Rake on January 5, 2000, and with Mr. Rake on January 13, 2000. A supervised visit occurred with Mr. Rake and his sons on January 26, 2000, at Dr. Wright's office. She conducted a home study at Mr. Rake's McCall residence with the boys in attendance on February 12, 2000. Ms. Neumayer Rake had driven the boys to McCall and Dr. Wright met them in town and proceeded to Mr. Rake's home. Thereafter, Dr. Wright had followup sessions with Mr. Rake on February 16, 2000, and with Ms. Neumayer Rake on February 24, 2000.

21. Dr. Wright conducted a home visit to Ms. Neumayer Rake's Lewiston residence with the boys present on March 7, 2000. At page 6 of her Response to Complaint, Dr. Wright states: "On March 12, 2000, I ran into Joe Rake and his son, Johnnie, while skiing in McCall, Idaho." A telephone interview was conducted with the children's therapist on March 13, 2000. On March 16, 2000, Dr. Wright verbally reported the results of her evaluation to the attorneys and asked if it was necessary to file a report. A disagreement arose between Ms. Neumayer Rake and Dr. Wright on March 17, 2000, regarding the visitation schedule. That incident is addressed in the addendum to her report to the Court. Another visit with Ms. Neumayer Rake and the two boys occurred March 21, 2000, in Dr. Wright's office. On March 27, 2000, Dr. Wright faxed

a letter regarding a temporary visitation schedule to the attorneys and on April 4, 2000, faxed her report to Judge McDaniel. Consequently, Dr. Wright continued to act in her role as the custody evaluator until April 4, 2000.

22. On page 7 of her Response to Complaint, Dr. Wright noted she was ordered to provide her notes to both attorneys. Her last contact with the case in an evaluator role was May 10, 2000. She further states she was not in a therapeutic role for the Rake family and did not engage in any therapy with any of the parties or children.

23. Beginning on page 8 of her Response to Complaint, Dr. Wright summarizes each of the multiple allegations of Ms. Neumayer Rake and Dr. Wright provided her response. While Dr. Wright's responses are extensive, it is only necessary to review her responses relevant to the allegations of the Amended Complaint.

24. With respect to Ms. Neumayer Rake's allegations that Dr. Wright began dating Mr. Rake publicly in September, 2000, Dr. Wright's response is found on pages 16 and 17. She states that she resigned from the case in April, 2000, and "any social contact with Mr. Rake was substantially after my resignation and the submission of my report to the Court." (Exhibit 13, p. 16.) She acknowledged seeing Mr. Rake at the same quarter horse events and had casual contact after the evaluation was submitted to the Court. She admitted Mr. Rake and his sons stayed on occasion at her home in Lewiston when he had visitation. "In the fall and winter of 2000,

Mr. Rake and the children all stayed together in the basement apartment area for his convenience." (Exhibit 13, p. 16.) Dr. Wright did not respond to Ms. Neumayer Rake's allegation that John had seen Dr. Wright and Mr. Rake kissing while at her home during this period of time.

25. In response to Ms. Neumayer Rake's allegation that, in the early summer or late spring of 2000, Mr. Rake took Dr. Wright to Spokane for dinner, Dr. Wright admitted she had gone out to eat with Mr. Rake and his family on occasion after her role for the Court was completed.

26. In response to the allegation that Mr. Rake and Dr. Wright have taken plane trips to Elko, Nevada, together, Dr. Wright stated: "I traveled to a horse sale with Mr. Rake on one occasion. I paid my share of the expenses for the trip. There was no existing professional relationship with Mr. Rake or Ms. Rake at that time." (Exhibit 13, p. 16.)

27. Dr. Wright admitted she had a telephone call with Mr. Rake during the summer of 2000 about horses in response to the allegation that the boys heard Mr. Rake talking to Dr. Wright on the phone during the summer of 2000.

28. In response to the allegation that Dr. Wright and Mr. Rake were looking for ranch land together in the Lewiston area, Dr. Wright admitted that they were both interested in obtaining ranch land and looked at land together, but did not purchase land together.



29. Dr. Wright admitted she and her daughter spent part of the Thanksgiving holiday in 2000 with Mr. Rake and his sons in McCall and admitted she spent part of the Christmas holiday in 2000 with Mr. Rake in McCall as well. On page 17, Dr. Wright stated: "My relationship with Mr. Rake ended July 17, 2001." On page 21, Dr. Wright said: "I did not become personally involved with Mr. Rake during the evaluation process." (Exhibit 13, p. 21.)

30. In response to Ms. Neumayer Rake's allegation that Dr. Wright's relationship with Mr. Rake has been harmful to the boys and confusing to them, Dr. Wright stated:

It may well be that Johnnie and Charlie could be confused about my relationship with their father and then after the evaluation. I believe the short relationship that I had with Mr. Rake will not harm or damage the children, except for the potential behavior Ms. Rake might engage in. I believe I was careful in my relationship with the children after the evaluation was concluded and was helpful to the children in dealing with their renewed relationship with their father. (Exhibit 13, p. 23.)

31. On page 25, in response to Ms. Neumayer Rake's allegation that Dr. Wright and Joe Rake had engaged in an intimate relationship less than six months after the evaluation was completed and publicly acknowledged the relationship, Dr. Wright stated:

Mr. Rake and I had a personal relationship from September, 2000 to July 2001. The relationship ended prior to my receiving Ms. Rake's complaint and began significantly after the evaluation was completed. (Exhibit 13, p. 25.)

32. On page 26, Dr. Wright stated she had no "feelings" toward Mr. Rake during the evaluation and "the evaluation was over significantly after any other relationship with Mr. Rake began."

33. Ms. Neumayer Rake further alleged that Dr. Wright and Joe Rake violated Section 4.07 of the APA Code of Ethics by announcing they were seeing each other and by engaging in a sexually intimate relationship. She alleged Mr. Rake and Dr. Wright told the children of their relationship, kissed in the presence of the children, and spent Thanksgiving weekend together with Dr. Wright's family. Dr. Wright's response was:

Ms. Rake is not impacted in any way by a personal relationship between Joe Rake and myself. I was not providing therapy nor was Ms. Rake or Mr. Rake my client. What is so troublesome about this accusation is that there can be no factual basis for the allegation. Ms. Rake is apparently getting information from her children, consistent with what she would like to believe. I did not announce to anyone that Mr. Rake and I were dating, or were sexually intimate. Such announcement would have been extremely inappropriate under any circumstance. (Exhibit 13, p. 26.)

34. On page 29, Dr. Wright admitted there was a series of e-mails between herself and C.J. Rake in July, 2000. In conclusion, she states: "I did not violate any applicable APA standards in dealing with the Rake family evaluation. My personal relationship in no way affected the outcome of the evaluation." (Exhibit 13, p. 29.)

35. In addition to initiating a disciplinary complaint against Dr. Wright, Ms. Neumayer Rake filed a civil lawsuit against

Dr. Wright. It is unclear exactly when the lawsuit was filed, but an Affidavit of Kathy Neumayer Rake dated August 22, 2002, was admitted as Exhibit S. Paragraph 21 of that Affidavit avers Mr. Rake and Dr. Wright were living together on a part-time basis since February, 2001, and moved in together permanently beginning August, 2002, when Mr. Rake lost his house in McCall.

36. In an Order dated October 31, 2002, Judge George Reinhardt, III, granted a summary judgment dismissing Ms. Neumayer Rake's lawsuit against Dr. Wright. Judge Reinhardt reviewed the Affidavit filed by Ms. Neumayer Rake and found the first evidence of a relationship between Dr. Wright and Mr. Rake relates to September, 2000, after Dr. Wright's report had been issued. He found the earlier ski trip was ambiguous and could constitute part of the home study observation. The sole issue to be determined by Judge Reinhardt was whether a court-appointed expert in a child custody case is entitled to quasi-judicial immunity. The Court found that, as a court-appointed expert, Dr. Wright was entitled to immunity from civil lawsuits. On page 8, Judge Reinhardt ruled:

Admittedly, there is a real question in this case as to whether Wright could be "neutral" in light of her relationship with Joe Rake - a relationship which has to be presumed because there is no evidence opposing Kathryn's affidavit. However, it is not clear when the relationship began or how it began. Regardless, Idaho does not deem a lawsuit to be the appropriate remedy for this situation.

Judge Reinhardt went on to explain Ms. Neumayer Rake had other remedies and quoted from the Idaho Supreme Court case of McKay v.

Owens, 130 Idaho 148, 937 P.2d 1222 (1997), that a court-appointed expert may still be subject to the rules of professional conduct of their profession. He also noted Ms. Neumayer Rake had filed a complaint with Dr. Wright's licensing board in January, 2001, which was still pending.

37. A second child custody evaluation in the Rake v. Rake case was conducted by Dr. Charles Gamble and dated October 1, 2002. That report evidences continuing conflict between Mr. Rake and Ms. Neumayer Rake. Dr. Gamble's report was admitted as Exhibit H.

38. On page 2 of his report, Dr. Gamble noted Dr. Wright "has fashioned a significant relationship with Mr. Rake." As a result of that relationship, Dr. Wright was required to participate in the child custody evaluation as a "significant other" of Mr. Rake.

39. Mr. Rake was interviewed May 30, 2002. On page 4, Dr. Gamble noted Mr. Rake admitted he had been dating Dr. Eileen Wright since September, 2000, and that the relationship began when the couple began horseback riding together following completion of the child custody evaluation.

40. Dr. Gamble's summary of his interview with Dr. Eileen Wright is found on pages 11 through 13. That interview was conducted June 27, 2002. Dr. Wright also admitted she began a dating relationship with Mr. Rake in the fall of 2000. Dr. Wright explained that while both individuals still maintained separate residences, Dr. Wright admitted to Dr. Gamble that she and Mr. Rake lived generally at her residence. She further acknowledged most

visitations between Mr. Rake and his two sons were occurring at her residence. She further indicated her relationship with Mr. Rake was "committed."

41. C.J. Rake was interviewed on June 11, 2002, by Dr. Gamble. C.J. advised Dr. Gamble he was seeing his father on alternate weekends, but none of those visits had occurred in McCall since February, 2002. When asked about the relationship between Dr. Wright and his father, he stated it was not an atmosphere he wanted to be in and he tried to ignore her. C.J. related that he began staying at Dr. Wright's house in the fall of 2000 during visits with his father. C.J. described a typical weekend as being picked up by his father after school and proceeding to Dr. Wright's ranch.

42. John Rake was interviewed June 11, 2002. John also confirmed that visitations with his father occurred at Dr. Wright's residence.

43. Dr. Gamble concurred with Judge McDaniel's prior ruling that Mr. Rake and Ms. Neumayer Rake have a post-divorce relationship which is high conflict. At the point of Dr. Gamble's evaluation, Mr. Rake was seeking a complete custody change based in large part upon opinions in the original custody evaluation conducted by Dr. Wright. With respect to the relationship between Mr. Rake and Dr. Wright, Dr. Gamble concluded:

It would also appear understandable that Ms. Rake would question the propriety of Dr. Wright's relationship with Mr. Rake. This examiner is not in a position so as to become

a moral compass for these individuals. That particular issue will apparently have a life of its own. One thing can be said, however. There is no reason to believe that Dr. Wright engenders any threat whatsoever to either of the boys. In fact, she appears quite concerned and nurturant with these two children. (Exhibit H, p. 24.)

Dr. Gamble recommended a 50/50 joint custody arrangement. No evidence was admitted to establish whether these recommendations were ultimately instituted by the Court.

44. C.J. and John Rake both provided written statements to the investigator for the Bureau of Occupational Licenses, Michelle Bissey, on December 9, 2003. In addition, both boys testified at the hearing. C.J. and John Rake stated, consistent with other evidence and testimony, that beginning in the fall of 2000, they became spending weekends at Dr. Wright's house. Both confirmed they began staying at Dr. Wright's house more frequently in the winter of February 2001 and Dr. Wright and Mr. Rake began sharing a bedroom by at least February, 2001.

45. In addition, both boys testified they went to the Winter Olympics in Salt Lake City with Dr. Wright and Mr. Rake in February, 2002, and spent several nights in a hotel. Dr. Wright and Mr. Rake shared a bed. C.J. Rake testified that, on two nights, he heard heavy breathing and moans coming from the bed shared by Mr. Rake and Dr. Wright. C.J. testified Dr. Wright and Mr. Rake were having sex. John Rake testified that, on one occasion, he heard moans coming from the bed that Dr. Wright and Mr. Rake were sharing. The moans lasted for about thirty minutes.

46. Pictures of the Winter Olympics ski trip were admitted as Exhibit K. Dr. Wright also drew a diagram of the room which was admitted as Exhibit U. Dr. Wright testified she did not share a bed with Mr. Rake. Rather, she testified that Mr. Rake and both boys slept on the floor around her bed in sleeping bags. She admitted the boys may have heard moans coming from her bed, but testified the moans and groans the boys heard occurred when her shoulder dislocated during her sleep one night. Mr. Rake was merely trying to reset the dislocation. Dr. Wright further contended the photographs, showing a significant amount of luggage, included sleeping bags. It appears the red bundles in the photographs might be sleeping bags; however, there are only two. C.J. was almost 13 and John was 10½ at the time of the trip to the Olympics. The Hearing Officer finds the boys' testimony regarding sexual intimacies occurring between Dr. Wright and Mr. Rake during the trip to the Utah Winter Olympics more credible and believable than that of Dr. Wright.

47. C.J. testified Dr. Wright's relationship with Dr. Rake was very distressing to him and the letter he wrote in November 2000 was an accurate reflection of his feelings about Dr. Wright. C.J. further testified he personally saw Dr. Wright and his father in bed together in the spring of 2001. Both boys also related they spent Thanksgiving of 2000 and Christmas 2000 with Dr. Wright and their father in McCall. C.J. first saw Dr. Wright and Mr. Rake kissing or hugging in a romantic fashion in the winter of 2000 and

January or February 2001, including hugs and kisses. More romantic conduct continued during the spring and summer of 2001. Both boys confirmed Dr. Wright's written admission indicating that Mr. Rake and Dr. Wright quit seeing each other for a while toward the end of the summer of 2001. The relationship resumed sometime before the winter of 2001-2002, when they went to the Winter Olympics together. C.J. testified the moaning and groaning he heard in the bed at the Utah hotel was different than the moans Dr. Wright might make when her knee dislocated. The sounds he heard in the motel room were not painful sounds.

48. During cross-examination, C.J. admitted he would do almost anything so he would not have to see his dad. However, he testified he knew his testimony regarding Dr. Wright would not affect any custody case.

49. John testified that, during the summer of 2000 when he was visiting with his father, his father would make phone calls and would not say who he was calling. Later, Mr. Rake admitted to John that he was calling Dr. Wright. John testified he saw Dr. Wright and his father kissing in the kitchen at Dr. Wright's old house. He testified it was a "boyfriend/girlfriend" kiss. In December 2001 or January 2002, he testified he was on the outside deck at Mr. Rake's McCall home. He looked around the corner and saw Mr. Rake and Dr. Wright in bed together during the day and Mr. Rake had no clothes on. He testified Mr. Rake currently lives with Dr. Wright.



50. Ms. Neumayer Rake testified that Dr. Wright's romantic involvement with Mr. Rake was very damaging and distressing to her. Both boys told her during the fall of 2000 that they were staying at Dr. Wright's home during their weekend visitations with their father. John also advised her he observed Dr. Wright and Mr. Rake kissing at Dr. Wright's home in late September, October or early November, 2000. The boys also told her that they had spent the Thanksgiving holiday in 2000 and the Christmas holiday in 2000 with Mr. Rake and Dr. Wright at Mr. Rake's home in McCall. These events were documented in the complaint filed by Ms. Neumayer Rake in January, 2001.

51. Dr. Wright argued that utilizing Ms. Neumayer Rake's testimony to support the credibility of the boys' testimony was improper and that Ms. Neumayer Rake's complaint did not include all the allegations of sexual intimacies now being raised by the Board. In fact, Ms. Neumayer Rake's complaint was filed January, 2001. Consequently, any events or sexual intimacies, occurring after January, 2001, such as the Olympics trip, could not possibly have been included in her written complaint. Further, contrary to Dr. Wright's arguments, Ms. Neumayer Rake's written complaint included relatively contemporaneous confirmation of the boys' later testimony at the hearing regarding events occurring before January, 2001. The boys' testimony at the hearing was consistent with those events previously reported to their mother as the events were occurring. Those events were also included in the complaint filed

by Ms. Neumayer Rake and Dr. Wright provided specific responses in which Dr. Wright admitted many of the allegations made by Ms. Neumayer Rake. For example, the January, 2001 complaint referenced the kissing incident, the Thanksgiving and Christmas visits, the visits at Dr. Wright's house and the dating relationship beginning in September, 2000. Regarding events after January, 2001, the boys also told Ms. Neumayer Rake that Mr. Rake was moving in with Dr. Wright around Valentine's Day, 2001. John told her about the incident in December 2001 or January 2002, when he observed Dr. Wright and Mr. Rake in bed at the home in McCall. Both boys also told her about what they heard at the Park City motel in February, 2002. She stated that, before Dr. Wright became involved with Mr. Rake, the boys were willing to go to counseling, but they became reluctant and indignant about counseling after Dr. Wright and Mr. Rake initiated a relationship with each other.

52. Karen Moore testified she was referred to Dr. Wright for marital counseling in 1999 and then became a good friend of Dr. Wright. They had common interests in horses. They confided a lot in each other and spent a lot of time together.

53. Karen Moore first met Mr. Rake on May 27, 2000, at a horse sale in Cottonwood. She was introduced to Mr. Rake by Dr. Wright and Dr. Wright asked Ms. Moore to give Dr. Wright her opinion of Mr. Rake. Dr. Wright introduced Mr. Rake as "my friend, Joe."

54. In the fall of 2000, Dr. Wright talked of her relationship with Mr. Rake frequently with Ms. Moore. Dr. Wright described Mr. Rake as her "boy toy" and that she liked "bad boys." Dr. Wright implied she had a very active sexual life with Mr. Rake and smiled and giggled. Dr. Wright also told Ms. Moore Dr. Wright "would match him [Mr. Rake] hump for hump and they fucked like rabbits." Similar conversations occurred between Ms. Moore and Dr. Wright many times during 2000 and 2001. Ms. Moore saw or talked to Dr. Wright almost daily.

55. Dr. Wright acknowledged to Ms. Moore that Dr. Wright and Mr. Rake had flown to Elko together to a horse show in the fall of 2000. At some point, Dr. Wright stated she "loved sex with Joe because he never quit."

56. With respect to Dr. Wright's purchase of a new house on Tammany Road, Lewiston, Ms. Moore and Dr. Wright had a conversation at Lucky Acres in early February, 2001, on a Friday night. Dr. Wright stated Mr. Rake had to have a Lewiston address to move to and Dr. Wright did not want Mr. Rake living with her at Preston Street. Consequently, Dr. Wright sold her house in town on Preston Street and moved in with Mr. Rake at Tammany Road. Randy Moore helped Dr. Wright move into that new home in late February or early March, 2001. Dr. Wright advised Ms. Moore more than once that she was not willing to give Mr. Rake up.

57. On cross-examination, Ms. Moore admitted her friendship with Dr. Wright has ended. Ms. Moore further admitted Dr. Wright

had lent Ms. Moore and her husband approximately \$8,450 in July 2001. The Moores have never repaid the money and the friendship ended in April 2003 when Ms. Moore felt Dr. Wright was taking advantage of Mr. Moore and was interfering with their marriage. Ms. Moore and her husband separated April 14, 2004. Mr. Moore had some significant mental issues and would disappear for two or three days and Ms. Moore would find out he was staying at Dr. Wright's house.

58. Ms. Moore testified regarding a trip to a horse show in Elko in September 2001, with Dr. Wright, Julene Dodd and Ms. Moore. The truck broke down and they had to wait for assistance.

59. Ms. Moore testified she and her husband were provided with hay for their horses in exchange for taking care of Dr. Wright's horses. Exhibit P represents a loan of \$8,400 from Dr. Wright to them for house payments and bills. The receipt was "created" to reflect the amount they owed Dr. Wright, but the figures on the receipt were added by someone else and do not accurately reflect the true value. Dr. Wright never received the dun mare or the grizzly. Ms. Moore testified she tried to pay Dr. Wright some part of the bill and Dr. Wright refused payment. The parties were then going to trade a quarter horse gelding and, when Ms. Moore delivered the horse, Dr. Wright would not accept it because she claimed it was lame, even though it was not.

60. Julene Dodd testified she has known Ms. Moore for twelve years. Ms. Dodd initially came in contact with Dr. Wright by

telephone when she sold insurance to her. Ms. Dodd personally met Dr. Wright and Mr. Rake on June 6, 2001, a date she clearly remembers because it was her wedding day. Dr. Wright and Mr. Rake had come down for a horse clinic in Eagle and Mr. and Mrs. Moore went to Ms. Dodd's for the wedding. There was a water leak in the horse trailer Dr. Wright and Mr. Rake brought down and Dr. Wright called the Moores for assistance in repairing the leak. Dr. Wright and Mr. Rake had a fight and Dr. Wright then came to the Dodd home and was upset. Ms. Dodd offered to let Dr. Wright stay at their home. When asked why she was staying with Mr. Rake, Dr. Wright advised both Ms. Moore and Ms. Dodd that Mr. Rake provided the "best sex she ever had" and she did not want to lose him.

61. Ms. Dodd confirmed Dr. Wright, Karen Moore and Ms. Dodd also took a trip to Elko in September, 2001. The truck broke down near Twin Falls and they had to wait for help. Ms. Dodd and Dr. Wright were in the truck alone at around 1:30 or 2:00 a.m. in the morning. They talked about a lot of things and Dr. Wright said she had a great sexual relationship with Mr. Rake and they "did it like rabbits." Dr. Wright acknowledged she was intimidated by Mr. Rake, but she was not willing to give him up because of the sex.

62. Megan Wright, Dr. Wright's daughter, confirmed she first met Mr. Rake at her mother's home in September, 2000, during a time when Mr. Rake's children were not with him. She also confirmed she and her mother spent Thanksgiving with Mr. Rake and his boys in McCall in 2000.

63. During her testimony, Dr. Wright admitted she again met Mr. Rake in late August or early September, 2000, when they were both riding at Lucky Acres. She knew Mr. Rake was a mason and she asked him to come to her house to give her an estimate for some work. Dr. Wright admitted Mr. Rake and the boys stayed at her home during the fall of 2000 about three times on weekends when John had football games on Saturday morning. On one occasion, Dr. Wright was not even in the home. Dr. Wright admitted that sometimes Mr. Rake would give her a hug as a "thanks" for letting him stay there and she admitted Mr. Rake told the boys during that period of time that they were dating. Dr. Wright also admitted she went to a horse sale in Elko the end of September, 2000, with Mr. Rake. Dr. Wright admitted spending part of the Thanksgiving 2000 holiday in McCall at Mr. Rake's home. She also admitted staying at Mr. Rake's home in McCall during the Christmas holiday of 2000. In early December 2000, Mr. Rake took Dr. Wright and her mother to watch the boys' school performance.

64. Dr. Wright admitted there were conversations with Karen Moore about buying the Moore home around December 2000, since Dr. Wright was looking for new property, as was Mr. Rake. Dr. Wright purchased the Tammany Creek Road property on March 15, 2001. She denied that, in February or March, 2001, Joe Rake had moved in with her, but acknowledged Mr. Rake was performing work on the home.

65. With respect to the trip to the Olympics in Salt Lake, Dr. Wright testified that Mr. Rake applied for tickets on an

internet lottery and won. Mr. Rake asked her to go to the Olympics. She testified she has a history of dislocating her shoulder and knee. She denied having sex with Mr. Rake in the hotel room during their trip to the Olympics. She testified that she did dislocate her right arm. She stated Mr. Rake had been sleeping on the floor and she had to wake him up to help her reduce the dislocation.

66. She attempted to explain that when she stated she had a "personal relationship" with Joe Rake beginning in September, 2000 she merely meant they had a friendship. Dr. Wright stated she was never sexually intimate with Joe Rake between April 2000 and April 2002. The Hearing Officer finds the testimony of Ms. Moore and Ms. Dodd that Dr. Wright admitted to a sexual relationship with Joe Rake during this period of time is more credible and clearly refutes the testimony of Dr. Wright.

67. Dr. Wright further acknowledged meeting with Dr. Gamble for purposes of the child custody evaluation and stated she "considered it as a peer consultation." She testified Dr. Gamble had no concerns with her living with Mr. Rake and stated that, prior to Dr. Gamble's evaluation, she had not resided with Mr. Rake. Dr. Wright's testimony is not supported by Dr. Gamble's report in which both Mr. Rake, Dr. Wright and the boys confirmed Mr. Rake was living at Dr. Wright's home a great deal of the time prior to the evaluation.

68. Dr. Wright confirmed Ms. Moore's testimony that Ms. Moore first met Mr. Rake at a horse sale in Cottonwood the end of May, 2000. The sale was conducted Memorial Day. Dr. Wright further acknowledged a conversation with Ms. Moore in which the words "boy toy" were used. However, she attributed those comments to Ms. Moore saying Joe would be a "good boy toy." Dr. Wright acknowledged her friendship with Ms. Moore ended around August 2002 and testified Ms. Moore was upset when Dr. Wright refused to loan her more money and Ms. Moore said: "I will ruin you."

69. With respect to the horse clinic in June, 2000, in Boise, Dr. Wright admitted she rode with Randy and Karen Moore to McCall and then with Mr. Rake from McCall to Eagle. The horse trailer had a compartment for people to sleep in. Dr. Wright testified she borrowed Mr. Rake's truck to drive to Ms. Dodd's home to get her personal items and denied she called the Moores to come help with the water line break. Dr. Wright denied ever telling Ms. Dodd and Ms. Moore that Mr. Rake was the best sex she ever had or that they did it like rabbits. The Hearing Officer finds the testimony of Ms. Moore and Ms. Dodd to be more credible.

70. Dr. Wright acknowledged the trip to Elko in September 2001 with Ms. Moore and Ms. Dodd, but denied stating she had a sexual relationship with Mr. Rake. The Hearing Officer finds the testimony of Ms. Dodd to be more credible.

71. Dr. Wright acknowledged she and Mr. Rake formed a business known as CJ Masonry, which was incorporated in the fall,



2003, and is jointly owned. Joe Rake put a lien on his vehicles to secure the money Dr. Wright put into the business.

72. The deposition of Joe Rake was admitted as an exhibit, but does not provide much helpful or direct testimony. He acknowledged staying at Dr. Wright's home two or three times during the fall of 2000, but contends he stayed in the same room as the boys. Mr. Rake acknowledged, at the Olympics, the motel room had couches which pulled out into beds. He stated he slept with the boys or on the floor. He denied having any sex with Dr. Wright at the Olympics. With respect to the business he has with Dr. Wright, she paid all expenses and he provided the tools. Mr. Rake did not testify as to the date his sexual relationship with Dr. Wright began.

73. After the complaint of Kathy Neumayer Rake was received by the Bureau of Occupational Licenses, Dr. Dave Sanford, as the cognizant member of the Board of Psychologist Examiners, reviewed the complaint. Dr. Sanford did not have Dr. Wright's response or any of the detailed testimony available during the hearing. Based solely upon the written complaint, he determined that the allegations regarding sexual intimacies would warrant an investigation.

74. After Dr. Wright provided her written response to the complaint, Dr. Mark Roberts, as the next cognizant member of the Board of Psychologist Examiners, reviewed the available information. While he found a number of potential ethical problems, the sole ethical issue involved in this proceeding is sexual intimacies

with former patients or clients. Dr. Roberts concluded Dr. Wright clearly admitted to a "personal relationship" in the two-year period after completion of her evaluation and one could reasonably infer that sexual intimacies occurred. Dr. Roberts felt there was strong evidence Dr. Wright had violated Section 407 of the Code of Professional Responsibility. He also noted Idaho Code §18-919 makes it a criminal violation for a medical care provider to engage in sexual exploitation of patients.

75. The deposition of Dr. David Sanford, taken October 3, 2003, was admitted as Exhibit 11. Dr. Sanford was never provided with the specific details of the allegations against Dr. Wright. Consequently, his testimony tended to be more theoretical than directed to Dr. Wright's conduct. Dr. Sanford testified he chaired the Ethics Committee of the Psychological Association in the 1980s and served on the Board of Psychologist Examiners from 1999 to 2003. He stated it is difficult to prove sexual intimacies by direct evidence and indicated kissing and hugging may not be considered sexually intimate. He did note that sexual intimacies with patients or clients is an egregious ethical violation. He further stated that, in the Code of Ethics, the term "client" and "patient" is used interchangeably and a client includes individuals who are involved with a psychologist in an evaluative role.

76. The deposition of Dr. Mark Roberts, taken November 6, 2003, was also offered as Exhibit 12. Dr. Wright objected to the admission of Dr. Roberts' deposition on the grounds of a lack of

foundation. Dr. Roberts' deposition notes he was a member of the Board of Psychologist Examiners and served as a cognizant member. He is a professor of psychology at Idaho State University and Director of the clinical training program in clinical psychology at Idaho State University. He was chairman of the Idaho Psychological Association's Ethics Committee from the late 1980s to the mid-1990s. While Dr. Roberts does not perform parenting evaluations, he is certainly familiar with the psychologists ethical obligations. The Hearing Officer will overrule Dr. Wright's objection to Dr. Roberts' testimony as lacking foundation.

77. Dr. Roberts testified that Dr. Wright living with Mr. Rake implies a sexual relationship between them and prohibited sexual intimacies include physical sexual contact, but might not include solely hugging and kissing. Dr. Roberts testified the Code of Ethics applies to forensic psychologists and the American Psychological Association has taken a strong stand against sexual relations with clients or patients.

78. Based upon the foregoing findings of fact, in relation to the Amended Complaint, Dr. Wright admitted Paragraphs 1, 2, 3, 4 and 5 of the Board's Complaint. Consequently, she has admitted the Idaho State Board of Psychologist Examiners is empowered by Idaho Code §54-2305 to regulate the practice of psychology in the State of Idaho. Dr. Wright has admitted she is a licensee of the Idaho State Board of Psychologist Examiners, holding license number PSY-299, and her license is subject to the provisions of Title 54,

Chapter 23, Idaho Code. She admitted that, on or about December 9, 1999, she was appointed by the Honorable Terry R. McDaniel to perform a comprehensive parenting evaluation in Rake v. Rake. She admitted that, on April 4, 2000, she completed the parenting evaluation and submitted it to Judge McDaniel and advised the Court she had resigned any further involvement. However, she admitted that she continued to "arrange" for visitation by Mr. Rake and engaged in at least fifteen telephone calls with Mr. Rake's attorney until late June, 2000. Dr. Wright further admitted that in September, 2000, she began a "personal relationship" with Mr. Rake, the Plaintiff in the case of Rake v. Rake.

79. With reference to Paragraph 6 of the Amended Complaint, Dr. Wright denied all of the allegations. Notwithstanding her denials, the Hearing Officer finds that the factual allegations of Paragraphs 6(a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (l) and (m) have been established by clear and convincing evidence. The allegations of Paragraph 6(g) have not been proven.

80. The Hearing Officer finds the evidence does establish, by clear and convincing evidence, that Dr. Wright began a dating relationship with Mr. Rake between September 2000 to late summer 2001, which resumed in November or December 2001 and has continued to date, which included sexually intimacies. Dr. Wright and Mr. Rake themselves admitted to Dr. Gamble that they began a dating relationship in September of 2000. The evidence establishes that that dating relationship included Dr. Wright and Mr. Rake sharing

beds and bedrooms, residing together, traveling together and sharing family holidays together. Dr. Wrights' direct admissions to both Ms. Moore and Ms. Dodd that Dr. Wright was having sexual relations with Mr. Rake is consistent with the other evidence and the admissions of the parties. While the boys are fairly young, the testimony they gave was consistent with and often verified by other witnesses. In fact, in her own testimony, Dr. Wright concurred with much of the boys' testimony, but contended the boys misinterpreted what was happening. For example, she confirmed the boys could well have heard moans and groans coming from her bed in the Park City hotel, but misinterpreted what was happening. Dr. Wright admitted that John may have seen her and Mr. Rake hugging in her home in the fall of 2000, but it was merely a "thank you" hug. Dr. Wright admitted Mr. Rake told the boys in September, 2000 that that they were dating.

81. The Hearing Officer further finds that Dr. Wright's relationship with Mr. Rake has been harmful to Ms. Neumayer Rake, C.J. and John. There is no question that Mrs. Rake and Mr. Rake had a very high conflict, contentious divorce and post-divorce course. Dr. Wright was well aware of this high level of conflict. By becoming involved with Mr. Rake, Dr. Wright likely exacerbated the conflict. She had already determined that Ms. Neumayer Rake was attempting to alienate the boys from Mr. Rake. Becoming romantically involved with Mr. Rake and having the children visit with Mr. Rake in Dr. Wright's home would not reduce the conflict and

alienation.

## CONCLUSIONS OF LAW

82. With respect to the burden of proof, the Board of Psychologist Examiners argues the burden of proof is a preponderance of the evidence, relying upon the case of Northern Frontiers, Inc. v. State, ex rel, Cade, 129 Idaho 437, 926 P.2d 21 (Ct.App. 1996). On the other hand, Dr. Wright argues that the burden of proof should be beyond a reasonable doubt with no citation to any legal authority.

83. The Hearing Officer concludes the burden of proof in a professional disciplinary license action is clear and convincing evidence. The Northern Frontiers case involved revocation of a liquor license, not a professional license. In that case, there was also an express statute which provided revocation could be done "upon sufficient proof." The Court determined "upon sufficient proof" is akin to a preponderance of the evidence standard which is generally applicable in administrative proceedings. However, the Court noted that, a statute or court rule could require a higher standard. 129 Idaho at 439.

84. With respect to professional licensing disciplinary actions, the Idaho Supreme Court has by case law adopted a stricter burden of proof, requiring clear and convincing evidence. This standard is required in disciplinary actions involving both lawyers and physicians and it is unlikely a different standard would be applied by the courts to disciplinary actions involving licensed

psychologists. Cooper v. Board of Professional Discipline, 124 Idaho 449, 456, 4 P.3d 561 (S.Ct. 2000), Footnote 3. The Hearing Officer concludes the burden of proof in this case is by clear and convincing evidence.

85. Dr. Wright contends the American Psychologist Association standards do not apply to the professional services provided by Dr. Wright. The Amended Complaint alleges Dr. Wright's conduct violates Idaho Code §54-2309(e) and Ethical Standards of the American Psychological Association, Section 4.07. Idaho Code §54-2309(e) states a psychologist's license may be revoked or suspended if the psychologist is:

Found by the board to have been unethical as detailed by the current, and future amended, ethical standards of the American Psychological Association.

Section 4.07 of the 1992 American Psychological Association Ethical Standards provides:

(a) Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least two years after cessation or termination of professional services.

(b) Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a two-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the two years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant

factors, including (1) the amount of time that has passed since therapy terminated, (2) the nature and duration of the therapy, (3) the circumstances of termination, (4) the patient's or client's personal history, (5) the patient's or client's current mental status, (6) the likelihood of adverse impact on the patient or client and others, and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client. (See also Standard 1.17, Multiple Relationships.)

86. The primary focus of Dr. Wright's defense is her argument that the American Psychological Association ethical standards simply do not apply to Dr. Wright because her role in this case was merely as an expert appointed by the Court to perform a child custody evaluation. Dr. Wright argues the Amended Complaint is constitutionally insufficient because Section 4.07 does not apply to a parenting coordinator. Dr. Wright contends Section 4.07 only applies to situations where a psychologist is providing direct therapy to a patient or a client.

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87. Exhibit A is the Order entered by Judge McDaniel appointing Dr. Wright as a parenting evaluator. The legal basis for the appointment is: "the evaluator is appointed as the Court's expert pursuant to Rule 706, Idaho Rules of Evidence." Rule 706, I.R.E., states:

(a) Appointment. The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses



of its own selection. An expert witness shall not be appointed by the court unless the expert witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; a deposition of the witness may be taken by any party; and the witness may be called to testify by any party or by the court pursuant to Rule 614(a). The expert witness shall be subject to cross-examination by each party, including a party calling the expert as a witness.

Rule 702, I.R.E., specifically provides that an expert witness is one who is qualified by knowledge, skill, experience, training or education to provide opinions on specialized knowledge to assist the trier of fact in understanding evidence or to determine a fact in issue.

88. Dr. Wright was appointed as an expert by the Court because she is a licensed psychologist. She does not step out of her licensed status solely because she is providing services as a parenting evaluator instead of providing direct therapy services. It is because of her license as a psychologist that she is qualified to be a parenting evaluator. While performing such duties as a licensed psychologist, Dr. Wright is still subject to possible disciplinary sanctions by the Board of Psychologist Examiners. See McKay v. Owens, 130 Idaho 148, 937 P.2d 1222 (1997).

89. Of particular significance in considering Dr. Wright's arguments is Exhibit 5, entitled "Guidelines for Child Custody

Evaluations in Divorce Proceedings," which was published in the July 1994 Edition of American Psychologist, and is a publication of the American Psychological Association, Inc. The Introduction found on Page 677 in the first paragraph states: "These guidelines build upon the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct* (APA, 1992)." The Guidelines for Child Custody Evaluations are clearly based upon reference to and application of the American Psychological Association Code of Conduct to child custody evaluations. Consequently, psychologists serving as child custody evaluators are not exempt from requirements of the Code of Conduct.

90. Exhibit 17 is a complete copy of the 1992 Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association which is applicable to this case. Dr. Wright contends Section 4.07 does not apply to her in her role as a parenting evaluator, arguing she did not provide therapy. The Introduction to the Code of Conduct states the Ethics Code applies to any work-related activities of a psychologist, including not only the clinical or counseling practice of psychology, but also conducting assessments, social intervention and other activities as well.

91. Section 1.01, regarding the applicability of the Ethics Code, specifically states all work-related functions of a psychologist are subject to the Ethics Code. That section states: "Personal activities having no connection to or effect on psycho-

logical roles are not subject to the Ethics Code." Section 1.19 prohibits psychologists from engaging in exploitative relationships with persons over whom they have evaluative or other authority and specifically references Standards 4.05-4.07 regarding sexual involvement with clients or patients. Finally, the Ethics Code, Section 7.01 states:

Psychologists who perform forensic functions, such as assessments, interviews, consultations, reports, or expert testimony, must comply with all other provisions of this Ethics Code to the extent that they apply to such activities.

92. Based upon the foregoing, the Hearing Officer concludes that the 1992 Ethics Code of the American Psychologist Association is applicable to Dr. Wright in her role as a child custody evaluator. Further, the Hearing Officer concludes Section 4.07 is applicable to Dr. Wright in her role as a child custody evaluator.

93. The Hearing Officer concludes Dr. Wright has violated Section 4.07(a) by engaging in sexual intimacies with Mr. Rake within two years after cessation or termination of professional services as a parenting evaluator. The Hearing Officer further concludes Dr. Wright has violated Section 4.07(b) by engaging in sexual intimacies with Mr. Rake after a two-year interval and by failing to establish that sexual intimacies with Mr. Rake were not harmful to or exploitative of Ms. Neumayer Rake and the boys.

94. Dr. Wright has raised various affirmative defenses in her Answer to Complaint which should be addressed. She contends the Idaho State Board of Psychologist Examiners should be estopped from

pursuing discipline for failing to act in a timely fashion. The defense of estoppel is inapplicable to actions by State agencies in its exercise of governmental functions. Kleiber v. City of Idaho Falls, 110 Idaho 501, 716 P.2d 1273 (1986).

95. She further argues the defense of res judicata bars action by the Idaho State Board of Psychologist Examiners based upon the decision of Judge Reinhardt in the malpractice lawsuit and the decision of Judge Boomer following the second evaluation completed by Dr. Charles Gamble. No evidence was presented of the final result of Judge Boomer's findings. Nonetheless, res judicata is applicable only if the Board was a prior party to those actions and involved the same claim. State v. Gusman, 125 Idaho 805, 874 P.2d 1112 (1994). The defense of res judicata is inapplicable.

96. Dr. Wright further contends the Idaho State Board of Psychologist Examiners is barred from getting involved in child custody matters because they are contentious and not susceptible to administrative determination in high conflict divorces. Dr. Wright provided no legal authority for this defense. As discussed above, Dr. Wright is still subject to the Code of Ethics and disciplinary action by the Board of Psychologist Examiners when acting as a parenting evaluator.

97. In her Answer to Complaint, Dr. Wright does not challenge the constitutional sufficiency of the allegations against her. However, she does raise those arguments in her closing arguments. Dr. Wright contends the Board is required to set forth the kind of

discipline they are seeking in the case, citing the case of Haw v. State Board of Medicine, 140 Idaho 152, 90 P.3d 902 (2004). In fact, in the Haw case, the Idaho Supreme Court never ruled that an administrative complaint must specify what disciplinary action might be taken against a licensee. In that case, the Court did rule that a licensee is entitled to hearing on the amount of costs and attorney's fees which might be sought against them. However, that case upheld the disciplinary sanction restricting Dr. Haw's license.

98. In this case, the Amended Complaint, with respect to disciplinary sanctions, refers to Idaho Code §54-2309(e) which clearly states a psychologist license may be revoked or suspended if the licensee is:

Found by the board to have been unethical as detailed by the current, and future amended, ethical standards of the American Psychological Association.

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99. Further, Paragraph 2 of the prayer for relief in the Amended Complaint states the Board should determine whether Dr. Wright's license should be revoked, suspended or other disciplinary action imposed. These provisions give adequate notice to Dr. Wright what disciplinary sanctions may be imposed and provided her with notice and an opportunity to present evidence on why discipline should not be imposed or what discipline might be appropriate.

100. Dr. Wright further argues, on pages 17 and 18 of her Post-Hearing Closing Argument, that she has a constitutional

interest in her professional license. That is, of course, correct. Cooper v. Board of Professional Discipline, 134 Idaho 449, 4 P.3d 561 (2000). Due process does require a short, plain statement of the particular acts of unprofessional conduct alleged. Dr. Wright argues that her due process has been violated because, throughout the course of the hearing, the Board has failed to provide any direct, observation of actual sexual intimacies. Dr. Wright has not cited any cases to support her contention that proof of sexual intimacies cannot be established by indirect proof or admissions of the licensee. It is also not a violation of due process to determine that violations have been established based upon the testimony of children and admissions of a party as testified to by competent, credible adults.

101. In this case, in addition to the testimony, of the boys, and Ms. Moore and Ms. Dodd, Dr. Wright herself admitted to a dating relationship with Mr. Rake beginning in September 2000 and continuing to the present, with a short break in the late summer of 2001. The fact that she was living with Mr. Rake in a "committed" relationship is further established through interviews with Mr. Rake and Dr. Wright by Dr. Gamble. Dr. Wright's own admissions, coupled with the testimony of the boys and Ms. Moore and Ms. Dodd, provide clear and convincing evidence that Dr. Wright has engaged in sexual intimacies with Mr. Rake, a former client, within two years of having terminated the professional relationship and thereafter.

102. Sexual intimacies between health care providers and their patients or clients are severely frowned on. As noted by Dr. Roberts, in addition to the prohibitions of Section 4.07 Idaho Code §18-919, adopted in 1996, makes it a crime for a health care provider to engage in sexual conduct with a patient or client, regardless of a consent of the patient or client.


103. Various Idaho Supreme Court cases have also affirmed disciplinary action taken against physicians who have been involved in sexual activities with patients. Woodfield v. Board of Professional Discipline, 127 Idaho 738, 754-755, 905 P.2d 1947 (Ct.App. 1995); Levin v. Idaho State Board of Medicine, 133 Idaho 413, 987 P.2d 1028 (S.Ct. 1999).

### RECOMMENDED ORDER

Based upon the foregoing, the Hearing Officer recommends that the Board of Psychologist Examiners impose such discipline as they deem to be appropriate.

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DATED This 22nd day of October, 2004.

  
JEAN R. URANGA  
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 22nd day of October, 2004, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to:

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